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Item 13 (b) of the provisional agenda

Outstanding items

Procedures and institutional mechanisms for the resolution of questions on implementation

**Procedures and institutional mechanisms for the resolution of
questions on implementation**

Note by the secretariat

Summary

This report presents background information and describes progress made in considering procedures and institutional mechanisms for the resolution of questions on implementation in accordance with article 27 of the United Nations Convention to Combat Desertification. It includes submissions by Parties and interested institutions and organizations, highlights relevant precedents and new developments, and presents conclusions, recommendations and proposed actions.

Pursuant to decision 29/COP.10, this document has been prepared on the basis of document ICCD/COP(10)/25, taking into account, as appropriate, previous documents of the Conference of the Parties relating to this matter.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Background information	1–4	3
II. Submissions by Parties and United Nations organizations.....	5–6	3
III. Procedures and institutional mechanisms for the resolution of questions on implementation.....	7–51	4
A. Tuvalu.....	7–8	4
B. Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol)...	9–12	4
C. Convention on Long-Range Transboundary Air Pollution	13–16	5
D. Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol)	17–21	7
E. United Nations Framework Convention on Climate Change and its Kyoto Protocol	22–25	8
F. Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention).....	26–37	9
G. Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention)	38–40	12
H. Convention on Persistent Organic Pollutants (Stockholm Convention)	41–43	12
I. United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).....	44–51	13
IV. Conclusions, recommendations and proposed actions	52–55	15

I. Background information

1. By its decision 29/COP.10, the Conference of the Parties (COP) decided, for purposes of fulfilling the provisions of article 27 of the Convention, to reconvene, during its eleventh session, the open-ended Ad Hoc Group of Experts (AHGE) to examine further and make recommendations on procedures and institutional mechanisms for the resolution of questions on implementation.

2. In the above-mentioned decision, the COP also:

(a) Invited any Parties and interested institutions and organizations wishing to communicate their views on article 27 to do so, in writing, to the secretariat by 31 January 2013;

(b) Requested the secretariat to prepare a new working document on the basis of the submissions by Parties contained in previous documents of the COP on this matter, including a draft to provide options for, and the terms of reference of, a multilateral consultative process, and a compilation also of those views [...]; and

(c) Decided that the AHGE shall take as the basis of its work the new working document to be prepared by the secretariat.

3. The secretariat prepared reports on arbitration and conciliation procedures for the second to the tenth sessions of the COP.¹ The secretariat has prepared the present document to summarize developments and progress made in the resolution of questions on implementation, in accordance with article 27 of the Convention, with a view to deciding how to take this matter forward. This report aims to assist the AHGE in examining and making recommendations in the light of progress in negotiations on the same matters in the context of other relevant environmental conventions, and taking into account documents prepared by the secretariat for previous sessions of the COP.

4. The present document is composed of four parts. This chapter introduced decision 29/COP.10 and provided background information on the resolution of questions on implementation. Chapter II discusses how the secretariat proceeded with this COP request, identifies from whom submissions were received and provides summaries of this matter as they are addressed in other multilateral environmental agreements (MEAs). Chapter III contains a summary of these submissions as well as summaries prepared by the secretariat on updated information and new developments with regard to MEAs. Chapter IV consists of conclusions, recommendations and proposed actions regarding options and ways forward on measures to resolve questions on implementation.

II. Submissions by Parties and United Nations organizations

5. In September 2012 and March 2013, the secretariat forwarded a note verbale reminding Parties and interested institutions and organizations to communicate their views regarding the annexes containing arbitration and conciliation procedures. As at 31 May 2013, the secretariat had received or prepared summaries of submissions from one Party and eight United Nations organizations, namely Tuvalu, the Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), the Convention on Long-range

¹ Documents ICCD/COP(2)/10, ICCD/COP(3)/18, ICCD/COP(4)/8, ICCD/COP(5)/8, ICCD/COP(6)/7, ICCD/COP(7)/9, ICCD/COP(8)/7, ICCD/COP(9)/13 and ICCD/COP(10)/25.

Transboundary Air Pollution (LRTAP), the Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol), the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol, the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention), the Convention on Persistent Organic Pollutants (Stockholm Convention) and the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

6. The present document is an update to document ICCD/COP(10)/25. In particular, it provides current information with regard to the relevant precedents cited in that document, as well as information on new developments. Owing to the formatting and submission regulations for United Nations documents, it is not possible to reproduce submissions by Parties contained in previous COP documents and the terms of reference of a multilateral consultative process as requested in decision 29/COP.10. However, the secretariat has made these reports available for the eleventh session of the COP (COP 11) on the Convention website at <www.unccd.int/cop/officialdocs/Submissions.pdf>.

III. Procedures and institutional mechanisms for the resolution of questions on implementation

A. Tuvalu

7. Tuvalu believes that document ICCD/COP(10)/25 produced by the secretariat provides a useful basis for the consideration of the procedures and institutional mechanisms for the resolution of questions on implementation. Furthermore, Tuvalu underlines the fact that in the Convention different obligations apply to “affected country Parties” (article 5) and to “developed country Parties” (article 6), and also in the context of “priority for Africa” (article 7).

8. The implementation of these obligations should be reviewed through a process of facilitative engagement. In other words, the easiest process to implement article 27 (Measures to resolve questions of implementation) should be facilitated through a regular review process undertaken by the COP. Thus there should be a standing agenda item on the COP agenda entitled “Implementation of the Convention”. Discussion on the implementation of the Convention and any concerns thereof would be addressed when this agenda item is considered by the COP. Tuvalu does not believe that a special compliance body is required.

B. Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol)

9. The President of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol gave a presentation on the work of the Committee at its forty-eighth and forty-ninth meetings, which took place in Bangkok in July 2012 and Geneva in November 2012, respectively. At those meetings, the Committee prepared a total of six draft decisions, which had been forwarded for consideration by the Parties at its forty-ninth meeting.

10. The Committee was pleased with the excellent progress of the Parties in meeting the data reporting obligations of the Montreal Protocol, and only 4 of the 196 Parties that

should have reported data for 2011 failed to do so. The first draft decision dealt with data reporting and urged those 4 Parties to report the required data as soon as possible. The decision also noted with appreciation that 99 Parties reported their data by 30 June 2012 in accordance with decision XV/15,² enabling the Committee to carry out useful work at its July meeting, and encouraged Parties to submit their data as early as possible. In addition, 173 Parties reported data by 30 September 2012, as required under article 7 of the Montreal Protocol, an improvement on previous years.

11. The second draft decision dealt with requests from Parties for the revision of their hydrochlorofluorocarbons (HCFC) consumption baseline data for 2009, 2010 or both, in accordance with decision XIII/15.³ The third draft decision concerned the reporting of zero in article 7 data reporting forms, and reflected the concern of the Committee over some inconsistencies in the reporting of data for production, imports, exports and destruction of ozone-depleting substances in accordance with article 7 of the Montreal Protocol. The fourth draft decision, on the reporting of information on the use of process agents, noted with appreciation that 195 of the 197 Parties to the Montreal Protocol had reported such information in accordance with decision X/14 and decision XXI/3,⁴ and urged the two Parties that had not submitted their information to do so as a matter of urgency. The Committee would review the situations of those Parties at its fiftieth meeting.

12. The fifth draft decision, dealing with the status of the establishment of licensing systems under article 4B of the Montreal Protocol, noted with appreciation that 191 of the 192 Parties to the Montreal Amendment to the Protocol had established import and export licensing systems for ozone-depleting substances, as required by the Amendment, and that 190 of those Parties had provided disaggregated information on their licensing systems detailing which annexes and groups of substances under the Montreal Protocol were subject to those systems. The operative paragraphs of the draft decision (1) congratulated South Sudan for having recently ratified all amendments to the Montreal Protocol and requested it to establish an import and export licensing system; (2) asked the Gambia and Tajikistan to undertake measures regarding their licensing systems; (3) and encouraged Botswana to ratify the Montreal Amendment. The final draft decision concerned the non-compliance of Ukraine with the control measures of the Montreal Protocol for the consumption of HCFCs in 2010 and 2011. The draft decision recorded with appreciation the submission by Ukraine of a plan of action for reducing its consumption of HCFCs, returning to compliance in 2015 and attaining total phase-out by 2020, save for some consumption in the servicing of refrigeration and air-conditioning equipment until 2030. The Committee appreciated the attendance of the representatives of Ukraine at its forty-ninth meeting to discuss the matter.

C. Convention on Long-Range Transboundary Air Pollution

13. The Long-term strategy for the Convention on Long-Range Transboundary Air Pollution identifies as a priority, among other things, the implementation of and compliance

² In document UNEP/OzL.Pro.15/9. Available at http://ozone.unep.org/Meeting_Documents/mop/15mop/index.shtml.

³ In document UNEP/OzL.Pro.13/10. Available at http://ozone.unep.org/new_site/en/meeting_documents.php?mdt_id=1&m_id=19&meeting_for=MPVC&meet.

⁴ In documents UNEP/OzL.Pro.10/9 and UNEP/OzL.Pro.21/8, respectively. Available at http://ozone.unep.org/new_site/en/meeting_documents.php?mdt_id=1&m_id=22&meeting_for=MPVC&meet and http://ozone.unep.org/new_site/en/meeting_documents.php?mdt_id=1&m_id=9&meeting_for=MPVC&meet, respectively.

with the LRTAP Convention's three latest Protocols: the Protocol on Persistent Organic Pollutants (Protocol on POPs), the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol) and the Protocol on Heavy Metals.⁵

14. The Action Plan for the Implementation of the Long-term Strategy for the Convention⁶ charged the LRTAP Implementation Committee with the tasks of identifying and evaluating systemic and other barriers to achieving compliance, and identifying options for improvements. In the course of 2012, the Committee considered ways and means to improve compliance, including identifying the systemic barriers to achieving compliance. It named as potential barriers gaps in guidance on inventory compilation, inaccurately worded obligations in the Protocols and obligations which were difficult to measure, among other things.

15. In December 2012, as per decision 2012/25 on improving the functioning of the Committee (see document ECE/EB.AIR/113/Add.1), the Executive Body of LRTAP adopted amendments to the Committee's terms of reference. There continues to be two main procedures for bringing cases of potential non-compliance to the Committee's attention contained in the previous terms of reference: submissions by Parties and referrals by the secretariat. A change had been introduced to the procedure for making referrals by the secretariat. As per the new terms of reference "Where the secretariat, in particular upon reviewing the reports submitted in accordance with a protocol's reporting requirements or on receipt of information from a technical body or centre under the Convention, becomes aware of possible non-compliance by a Party with any of its obligations, it shall promptly request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months or such longer period as the circumstances of the matter may require, the secretariat shall bring the matter to the attention of the Committee." The new terms of reference also added a new paragraph introducing that "where the Committee (...) becomes aware of possible non-compliance by a Party with any of its obligations that has not been identified by the secretariat, it may inform the secretariat. The secretariat shall forthwith, on the basis of that information, initiate contact with the Party concerned," following the process stipulated for referrals. The Committee reports to the Executive Body, the highest-level governance and decision-making organ under the LRTAP Convention, and makes recommendations concerning non-compliance cases. The Executive Body adopts these, urging Parties to take measures to reduce their emissions, including policy, legislative and technical measures, and to submit information on efforts made.

16. In May 2012, the Executive Body took a decision on adjustments under the Gothenburg Protocol to emission reduction commitments or to inventories for the purposes of comparing total national emissions with them.⁷ In accordance with this decision, a Party can make an adjustment to its inventory or propose an adjustment to its emission reduction commitments in three extraordinary circumstances: (a) new emission source categories are identified that were not accounted for at the time emission reduction commitments were set; (b) emission factors used to determine emission levels for particular source categories for the year in which emissions reduction commitments are to be attained are significantly different from the emission factors applied to these categories when emission reduction commitments were set; or (c) the methodologies used for determining emissions from

⁵ Decision 2010/18 in document ECE/EB.AIR/106/Add.1. Available at www.unece.org/fileadmin/DAM/env/documents/2010/eb/eb/ece.eb.air.106.add.1.e.pdf.

⁶ Decision 2011/14 in document ECE/EB.AIR/109/Add.1. Available at www.unece.org/fileadmin/DAM/env/documents/2011/eb/eb/ECE_EB.AIR_109_ADD1_E.pdf.

⁷ Decision 2012/3 in ECE/EB.AIR/111/Add.1. Available at www.unece.org/env/lrtap/executivebody/eb_decision.html.

specific source categories have undergone significant changes between the time when the emission reduction commitments were set and the year they are to be attained. As stipulated in decision 2012/3, the Executive Body decided that the Committee would suspend action on any referrals from the secretariat related to a Party's compliance with its emission reduction commitments where a Party has proposed notification of its intent to apply an adjustment to its inventory or to its emission reduction commitment. This situation is different in case the Committee receives a referral from the secretariat based on information from the Steering Body of the Cooperative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants indicating that the adjustment is not consistent with the circumstances listed above and the guidance adopted by the Executive Body.⁸

D. Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol)

17. The seventh meeting of the Compliance Committee under the Cartagena Protocol took place in Montreal from 8 to 10 September 2010. The Compliance Committee held further discussions on those items examined at its previous meeting relating to national reporting rates and status of compliance in fulfilling obligations to make information available to the Biosafety Clearing-House (BCH). It also considered the views submitted by Parties on how to improve the supportive role of the Compliance Committee. The Committee finalized its recommendations and report for submission to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol (COP-MOP 5). For details see the report of the meeting in document UNEP/CBD/BS/CC/7/3.⁹

18. COP-MOP 5 considered the report of the Compliance Committee and underlined the need to further build the confidence of Parties in the role of the Compliance Committee. In this regard, the COP-MOP decided that in instances where a Party makes a submission relating to compliance with respect to itself, the Compliance Committee shall, in response, consider taking only measures that are facilitative and supportive, i.e. providing advice or assistance to the Party concerned and/or making recommendations to COP-MOP regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures (decision BS-V/1).¹⁰ It also decided that these measures may be taken in a situation where a Party fails to submit its national report, or where information was received through a national report or the Secretariat, based on information from the BCH, that shows that the Party concerned is faced with difficulties complying with its obligations under the Cartagena Protocol. The COP-MOP further encouraged Parties that are facing difficulties complying with their obligations under the Cartagena Protocol due to lack of capacity to make submissions to the Compliance Committee so that facilitative and supportive measures could be explored with a view to helping them overcome the difficulties.

19. The Compliance Committee held its eighth meeting in Montreal from 5 to 7 October 2011. It discussed possible modalities of implementation of the supportive role of the Compliance Committee as modified by decision BS-V/1 and developed an approach and a work plan to guide its functions in the context of this decision. It also agreed to further

⁸ Decision 2012/12 in document ECE/EB.AIR/113/Add.1. Available at <www.unepce.org/fileadmin/DAM/env/documents/2012/EB/Decision_2012_12.pdf>.

⁹ See CBD document UNEP/CBD/BS/CC/7/3.

¹⁰ <<http://bch.cbd.int/protocol/decisions/decision.shtml?decisionID=12314>>.

elaborate, including on a case-by-case basis, and keep under review the appropriate steps that may be needed to effectively address compliance-related issues and difficulties faced by Parties. The Committee further considered the potential need for the exchange of information and informal discussions among members during the intersessional period and noted the availability of a collaborative online portal in the BCH, which is accessible only to members of the Committee. For further details, see the report of the meeting in document UNEP/CBD/BS/CC/8/3.

20. The Compliance Committee held its ninth meeting in Montreal from 30 May to 1 June 2012. The Committee reviewed compliance with the obligation to submit national reports. It considered the rate of submission of second national reports on the implementation of each Party's obligation under the Cartagena Protocol, the completeness of the reports and the situation with respect to those few Parties which have not submitted any national report at all since they became Parties. It also reviewed general issues of compliance based on information from the second national reports that has been synthesized by the Secretariat. The Committee prepared and adopted its report and recommendations for submission to the COP-MOP at its sixth meeting. For further details, see the report of the meeting in document UNEP/CBD/BS/CC/9/4.

21. The COP-MOP considered the report and the recommendations of the Committee at its sixth meeting. In its decision BS-VI/1,¹¹ the COP-MOP called upon the concerned Parties to give utmost priority to putting in place legal and administrative frameworks necessary to meet their obligations under the Cartagena Protocol. It requested those Parties to submit information on the challenges they are faced with in this regard for consideration and possible assistance by the Compliance Committee. In its decision BS-VI/14,¹² the COP-MOP also urged, on the basis of the recommendations of the Compliance Committee, those Parties that have not submitted their national report to do so at the earliest opportunity. It encouraged Parties to facilitate the preparation and submission of their national reports by using, as appropriate, technical and other resources available in existing bilateral, subregional and regional arrangements, and the roster of biosafety experts.

E. United Nations Framework Convention on Climate Change and its Kyoto Protocol

22. The Kyoto Protocol was adopted in Kyoto, Japan on 11 December 1997 and entered into force on 16 February 2005. The detailed rules for the implementation of the Protocol were adopted at the seventh session of the Conference of the Parties (COP 7) in Marrakesh, Morocco in 2001 and are referred to as the Marrakesh Accords. Its first commitment period started in 2008 and ended in 2012.

23. At its eighteenth session in Doha in December 2012, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) adopted the Doha Amendment to the Kyoto Protocol. The amendment includes:

(a) New commitments for Annex I Parties to the Kyoto Protocol who agreed to take on commitments in a second commitment period from 1 January 2013 to 31 December 2020;

(b) A revised list of greenhouse gases (GHG) to be reported on by Parties in the second commitment period; and

¹¹ See CBD document UNEP/CBD/BS/COP-MOP/6/18.

¹² See document referred to in footnote 11 above.

(c) Amendments to several articles of the Kyoto Protocol which specifically referenced issues pertaining to the first commitment period and which needed to be updated for the second commitment period.

24. On 21 December 2012, the amendment was circulated by the Secretary-General of the United Nations, acting in his capacity as Depositary, to all Parties to the Kyoto Protocol in accordance with articles 20 and 21 of the Protocol.

25. During the first commitment period, 37 industrialized countries and the European Community committed to reduce GHG emissions to an average of five per cent against 1990 levels. During the second commitment period, Parties committed to reduce GHG emissions by at least 18 per cent below 1990 levels in the eight-year period from 2013 to 2020; however, the composition of Parties in the second commitment period is different from the first, as some Parties who adopted the Kyoto Protocol have recently withdrawn from it.

F. Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention)

26. Implementation and compliance matters fall within the mandate of the Committee Administering the Mechanism for Promoting Implementation and Compliance with the Basel Convention. This section provides information on the implementation of the Committee's work programme, including access to Committee members' restricted data. The Committee's work programmes adopted by the Conference of the Parties (COP) to the Basel Convention pertain to both mandates of the Committee: its specific submissions mandate and its general review mandate.

1. Monitoring, assessing and facilitating reporting under article 13 of the Convention

27. The Committee considered all the activities listed in its 2009–2011 work programme.¹³ Activities (a), (b) and (d) in table 1 of the work programme were considered at its seventh session, and activities (c)–(f) at its eighth session. The Committee recommends that decisions pertaining to activities (c) and (d) be adopted by the COP at its tenth meeting.

28. The Committee reviewed the information held by the Secretariat under article 13 of the Basel Convention (activity (a)) and noted with concern the declining trend in reporting. The Committee also considered and took note of a document prepared by the Secretariat setting out three lists, developed for information purposes, indicating those Parties that had submitted complete reports for 2006, those that had submitted partial reports for 2006 and those that had not reported for 2006 (activity (b)).

29. The Committee considered activity (c) on assessing the status of reporting, identifying the difficulties faced by Parties in fulfilling their national reporting obligations and their needs for assistance with regard to reporting, which has been reproduced in document UNEP/CHW.10/INF/11. The Committee decided to recommend that the COP at its tenth meeting adopt a decision on the matter. In considering activity (d) on classifying and publishing Parties' compliance performance with regard to the annual reporting obligations, the Committee made the following comments:

(a) Parties currently lack incentives fully to comply with their national reporting obligation;

¹³ See table 1 in annex IV to document UNEP/CHW.10/9/Rev.1.

(b) Parties lack guidance as to what is expected from them (lack of a benchmark or model national report);

(c) The proposed classification will mean adjusting the way in which the tables on the status of national reporting posted on the Convention website are developed by the Secretariat for information purposes, since they do not currently take into account the answers to the sub-questions of Convention;

(d) The purpose of the classification is to provide information on the timeliness and completeness of national reporting and to provide the Conference of the Parties with trends in reporting compliance;

(e) Classification of Parties' compliance performance with regard to the annual reporting obligation should be a regular Committee activity and, as such, included in its work programme and undertaken annually. Should the COP at its tenth meeting adopt the benchmark or model national report developed by the Committee, the classification would be undertaken with reference to that benchmark or model report; and

(f) Publication of the compliance performance is done by including the classification in the Committee's report to the Conference of the Parties, and by posting the information on the Convention website.

30. The Committee decided that, in undertaking activity (d), the Committee would classify Parties on the basis of two criteria (timeliness and completeness of the report) and the following five categories:

- (a) Fully reported and on time;
- (b) Fully reported (but late);
- (c) Reporting incomplete (but on time);
- (d) Reporting incomplete (and late); and
- (e) Not reported.

31. In considering the development of further guidance documents on best practices in national reporting (activity (e)), the Committee decided to retain a consultant to develop a benchmark national report intended to guide Parties on the content of the information to be reported under the Convention.

32. Concerning activity (f) on the facilitation of exchange of information on best available practices and techniques in national reporting, the Committee requested the Secretariat to prepare a note presenting options on how to organize workshops on improving national reporting.¹⁴

33. At its eighth session, the Secretariat reported to the Committee on the steps that it had taken and the results achieved. The Committee saw value in harmonizing the formats currently existing for Parties to notify, pursuant to article 3 and paragraph 2 (b) of article 13 of the Convention, and to report, pursuant to paragraph 3 of article 13 of the Convention, national definitions of hazardous wastes. It also welcomed any effort to ease the burden on Parties to communicate information to other Parties through the Secretariat. It requested the Secretariat to develop a harmonized standardized reporting format for transmitting information under article 3 of the Convention and question 2 (c) of the revised questionnaire that combined the elements of the current standardized reporting format for

¹⁴ The note has been reproduced in document UNEP/CHW.10/INF/11.

transmitting information under article 3 of the Convention and those of question 2 (c) of the revised questionnaire.

2. Notifications prohibiting the import or export of hazardous and other wastes

34. The Committee considered activity (b) at its seventh and eighth sessions. At its seventh session, the Committee received an oral report from the Secretariat on the status of notifications prohibiting the import or export of hazardous wastes and the discrepancies between information reported and notified, and requested the Secretariat to take steps in the intersessional period to update the information that it held. At its eighth session, the Secretariat reported to the Committee on the steps that it had taken and the results achieved. As with the issue of national definitions, the Committee saw value in harmonizing the formats for Parties to notify and to report import and export prohibitions. The Committee requested the Secretariat to develop a standardized reporting format for transmitting information under paragraphs 1 (a) and (b) of article 4 and paragraphs 2 (c) and (d) of article 13 of the Convention. The proposed format is identical in substance to the current questions 3(a)–(f) of the revised questionnaire on restrictions on transboundary movements of hazardous wastes and other wastes. The Committee also decided to recommend that the COP at its tenth meeting adopt a decision on the matter, including adoption of the standardized reporting format. The draft decision is set out in chapter II of document UNEP/CHW.10/9/Rev.1 (see paragraphs 32–36 in chapter III of this draft decision).

3. Designation of competent authorities and focal points under article 5 of the Convention

35. The Committee considered activities (c) and (d) at its seventh session, and (c)–(e) at its eighth session. At its seventh session, the Committee considered a note by the Secretariat on the status of the designation of competent authorities and focal points. The Committee requested the Secretariat to take specific steps to invite Parties to confirm the accuracy of the information notified to the Secretariat, to contact Parties that had not designated a focal point and a competent authority, and to develop a report on difficulties faced by Parties in designating a focal point and competent authorities.

4. Control system for the transboundary movement of hazardous wastes

36. The Committee considered activity (f) at its eighth session on the basis of a report prepared by a consultant and agreed on the recommendations made therein.¹⁵ The Committee decided to recommend that the Conference of the Parties at its tenth meeting adopt a decision on the matter. The draft decision is set out in chapter II of document UNEP/CHW.10/9/Rev.1 (see paragraphs 41–45 in chapter III of this draft decision).

5. Status of legislation and other legal or administrative measures

37. The Committee considered activity (g) at its eighth session on the basis of a report prepared by a consultant. Following the session, the Committee agreed on the recommendations made in the report.¹⁶ The Committee decided to recommend that the Conference of the Parties at its tenth meeting adopt a decision on the matter. The draft decision is set out in chapter II of document UNEP/CHW.10/9/Rev.1 (see paragraphs 46–51 in chapter III of this draft decision).

¹⁵ The report has been reproduced in document UNEP/CHW.10/INF/11.

¹⁶ See document referred to in footnote 16 above.

G. Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention)

38. At its fourth meeting, the Conference of the Parties (COP) to the Rotterdam Convention decided, by its decision RC-4/7, to consider further at its fifth meeting from 28 April to 10 May 2013 in Geneva, Switzerland the procedures and institutional mechanisms on non-compliance required under article 17 of the Rotterdam Convention with a view to their adoption. It had further decided that the draft text set out in the annex to decision RC-4/7¹⁷ should form the basis of further discussion at the current meeting on those procedures and institutional mechanisms. It was generally agreed that ensuring compliance with the Convention was essential and that the effectiveness and integrity of the Convention could be undermined unless appropriate measures were introduced.

39. The COP agreed to establish a contact group to discuss the draft text on non-compliance and to identify the obstacles to be overcome for consensus on the matter to be reached. The COP subsequently considered the draft decision prepared by the Secretariat and agreed to consider further a compliance mechanism at its sixth meeting. This decision would contain, in an annex, the results of the deliberations of the contact group as the basis for further negotiations, together with the co-chairs' compromise text as a reference point.

40. The adoption of the procedures and institutional mechanisms on non-compliance required under article 17 of the Rotterdam Convention were further considered at the fifth meeting of the COP. The COP decided that the draft text set out in the annex to decision RC-5/8¹⁸ will form the basis for its further work on the procedures and institutional mechanisms. It also requested the Secretariat of the Rotterdam Convention that this item be placed early on the agenda at its sixth meeting, bearing in mind the proposal of the co-chairs of the contact group on compliance as set out in the appendix to this present decision.

H. Convention on Persistent Organic Pollutants (Stockholm Convention)

41. Article 17 of the Stockholm Convention on Persistent Organic Pollutants provides for the development and approval of procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for the treatment of Parties found to be in non-compliance.¹⁹

42. The issue of non-compliance was considered by the Conference of the Parties (COP) at all five of its previous meetings without agreement on procedures being reached as required under article 17 of the Convention. At its fifth meeting, a facilitator of the COP reported to this body on the consultations held in that connection, following which no negotiations on procedures were held, and the COP adopted decision SC-5/19²⁰ on procedures and mechanisms on compliance with the Stockholm Convention, by which it decided to consider further at its sixth meeting for adoption the procedures and institutional mechanisms on non-compliance required under article 17.

¹⁷ In document UNEP/FAO/RC/COP.4/24. Available at www.pic.int/TheConvention/ConferenceoftheParties/Meetingsanddocuments/COP4/tabid/1054/language/en-US/Default.aspx.

¹⁸ In document UNEP/FAO/RC/COP.5/26. Available at www.pic.int/TheConvention/ConferenceoftheParties/Meetingsanddocuments/COP5/tabid/1400/language/en-US/Default.aspx.

¹⁹ See text of the Stockholm Convention at <http://chm.pops.int/Convention/tabid/54/Default.aspx>.

²⁰ [http://chm.pops.int/Convention/ConferenceoftheParties\(COP\)/Decisions/tabid/208/Default.aspx](http://chm.pops.int/Convention/ConferenceoftheParties(COP)/Decisions/tabid/208/Default.aspx).

43. Should the COP at its sixth meeting adopt the procedures and mechanisms on non-compliance required under article 17 of the Convention, it will need to elect the required number of members of the Compliance Committee at that meeting, based on the membership criteria agreed upon.²¹ In doing so, the COP will also have to consider the possible adoption of the procedures and institutional mechanisms on non-compliance required under article 17 and to base its work either on the draft text contained in annex I of UNEP/POPS/COP.6/29 or on the intersessional work set out in annex II of the same document.²²

I. United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

44. The Aarhus Convention provides for two mechanisms to promote proper implementation and adequate compliance: one is the requirement for regular reporting on implementation under article 10, paragraph 2; another is the more sophisticated arrangement under article 15²³ to review compliance.

45. As regards the reporting mechanism, article 10, paragraph 2, requires the Parties to “keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties”. At their first session, the Parties adopted decision I/7 on review of compliance and established the Compliance Committee.²⁴

46. As set out in decision I/7, the members of the Compliance Committee serve in their personal capacity, which is to say that the Committee functions as an independent body when reviewing compliance by the Parties. The Committee is to report and make recommendations to the Meeting of the Parties (MOP) for it to decide upon and take appropriate action. In certain circumstances, the Committee itself may take certain actions on an interim basis, in consultation or in agreement with the Party concerned.

47. According to decision I/7, the Compliance Committee has the following functions:

- (a) Consideration of any submission, referral or communication made in accordance with paragraphs 5 to 24 of decision I/7;
- (b) Preparation, at the request of the MOP, of a report on compliance with or implementation of the provisions of the Convention; and
- (c) Monitoring, assessing and facilitating the implementation of and compliance with the reporting requirements under article 10, paragraph 2, of the Convention.

²¹ See criteria contained in paragraphs 6, 7 and 8 of the draft texts set out in annexes I and II of document UNEP/POPS/COP.6/29.

²² See references in footnote 22 above.

²³ Article 15 of the Rotterdam Convention does not itself establish a system for compliance review, but it obliges the MOP to establish optional compliance review arrangements along certain principles. One of these principles is that the mechanism would be of a non-confrontational, non-judicial and consultative nature. This means that the intention of compliance review is not to point the finger at Parties that are in violation of the Convention, but to recognize and assess the shortcomings of Parties and to work in a constructive atmosphere to assist them in complying. In keeping with the Convention’s spirit, another principle calls for the involvement of members of the public. The text of the Aarhus Convention is available at: <www.unece.org/env/pp/welcome.html>.

²⁴ <www.unece.org/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf>.

48. The Committee may examine compliance issues and make recommendations if and as appropriate. The Committee reviews submissions and communications regarding the Parties' compliance, resolves questions on implementation and makes recommendations. In particular, a review of a specific Party's compliance may be triggered in four ways:

- (a) A Party may make a submission about compliance by another Party;
- (b) A Party may make a submission concerning its own compliance;
- (c) The secretariat may make a referral to the Committee; and
- (d) Members of the public may make communications concerning a Party's compliance with the Convention.

49. The Committee cannot issue binding decisions, but rather may make recommendations either to the MOP, or in certain circumstances, directly to individual Parties. Committee reports are available to the public. The MOP may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. The MOP may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- (a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;
- (b) Make recommendations to the Party concerned;
- (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- (e) Issue declarations of non-compliance;
- (f) Issue cautions;
- (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention; and
- (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

50. As of today, the Compliance Committee has received 56 communications from the public and 1 submission from a Party about compliance by another Party. No submissions have been received by Parties concerning their own compliance, nor has the secretariat proceeded with a referral.²⁵

51. Although the Compliance Committee cannot make decisions on compliance that are legally binding for the Parties, its findings and recommendations are relevant for compliance with and implementation of the Convention. All adopted findings and recommendations are forwarded to the MOP for endorsement. To date, all findings of non-compliance by the Compliance Committee have been endorsed by the MOP. The findings

²⁵ See lists of communications at <www.unece.org/env/pp/pubcom.htm> and the submission at <www.unece.org/env/pp/Submissions.htm>. The submission was merged with a communication concerning the same issues of compliance by the Party concerned.

and recommendations of the Compliance Committee are carefully drafted. Its findings can be used as an indication of what is required by the Convention, and its recommendations provide useful information to Parties on how to implement the Convention, not only for the Party concerned in the specific case.

IV. Conclusions, recommendations and proposed actions

52. This report shows – as was the case in document ICCD/COP(10)/25 – that the balance of obligations in the multilateral environmental agreements (MEAs) are distinct from each other. This should lead to caution when studying the MEAs and drawing conclusions from experiences and lessons learned. For example, some compliance mechanisms have almost 20 years of experience reviewing cases (Montreal Protocol and LRTAP), whereas another has reviewed a few cases and its duration has ended in 2012 (Kyoto Protocol), and others have yet to be formally established (Rotterdam Convention and Stockholm Convention). The Basel Convention has not yet examined a specific case of non-compliance even though its procedures have already been established, whereas the Aarhus Convention has considered more than 30 communications since 2005. Specific penalties are applied to Parties found to be non-compliant with their obligations (Kyoto Protocol). However, some environmental non-compliance mechanisms support more technical assistance and apply more flexible solutions to such cases.

53. At its eleventh session, the COP may wish to consider the relevant background on procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention in order to assist Parties in complying with their commitments under the Convention.

54. At previous meetings of the AHGE, it was agreed (1) that any procedure or institutional mechanism to resolve questions on implementation should be facilitative and non-confrontational in character; and (2) that such procedures and institutional mechanisms should assist the Parties in fulfilling their obligations under the Convention. Further consideration is required regarding the scope of article 27 of the Convention, which could be understood as relating either to problems of implementation faced by the Parties to the Convention as a whole, and/or to difficulties experienced by individual Parties in fulfilling their obligations. As mentioned in previous COP document on this matter, the draft terms of reference for a multilateral consultative process in the annex to document ICCD/COP(9)/13 would be a good starting point for giving shape to a mechanism to efficiently address questions on implementation and resolve them bearing in mind the nature, scope, objectives and specific characteristics of the Convention, including the particularities of its five Regional Implementation Annexes.

55. After considering all issues mentioned in paragraphs 52–54 above, the COP may wish to:

(a) Adopt the draft terms of reference attached as an annex to document ICCD/COP(9)/13 and establish a multilateral consultative committee to assist Parties in the resolution of questions on implementation;

(b) Extend the work of the AHGE and decide that in order to reduce financial burdens, the AHGE should meet for a period of three days during the next intersessional session of the COP's subsidiary bodies. At the meeting of the AHGE, delegations should have enough time to analyse, discuss and review the draft terms of reference on a multilateral consultative committee aimed at resolving questions on implementation. This draft terms of reference could be reviewed again at COP 12 and

**adopted to assist Parties in complying with their commitments under the Convention;
and**

(c) Defer the consideration of article 27 of the Convention to a future meeting of the COP, when Parties consider there is consensus to reach a final decision.
